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No. 99-982

Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1999

In re Johnita F. Steinhilber,

Petitioner,

v.

Michael S. McFarland, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' BRIEF

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16pp

QUESTIONS PRESENTED

I. WHETHER PETITIONER WAS DEPRIVED OF A FULL, FAIR AND IMPARTIAL SEVENTH AMENDMENT JURY TRIAL BY THE DISTRICT COURT MAKING PRETRIAL ORDERS BASED UPON FINDINGS OF FACT IT MADE PRIOR TO TRIAL BY JURY.

II. WHETHER IT WAS AN ERROR AND ABUSE OF DISCRETION FOR THE COURT TO RELY ON CONTROVERTED ALLEGED "STIPULATIONS" IMPROPERLY FILED BY RESPONDANTS/PLAINTIFFS MORE THAN FOURTEEN YEARS PRIOR, AND WITHOUT ASSENT OF PETITIONER OR HER THEN-ATTORNEY, AS THE BASIS FOR ITS PRE-JURY TRIAL ORDERS PROHIBITING PETITIONER FROM PRESENTATION OF TESTIMONY AND EVIDENCE AND ARGUMENT TO THE JURY, AND PROHIBITING CONSIDERATION OF DEFENSIVE MATTERS BY THE JURY.

III. WHETHER THE DISTRICT COURT'S GRANT OF PARTIAL SUMMARY JUDGMENT AGAINST PETITIONER 156 DAYS AFTER ARGUMENT ON THE MOTION WAS ERRONEOUS, INASMUCH AS IT WAS BASED UPON

THE COURT'S PRE-JURY TRIAL FINDINGS OF FACT, AND VIOLATED RULE 56(c), F.R.C.P.

IV. WHETHER PETITIONER WAS DEPRIVED OF A FULL, FAIR AND IMPARTIAL SEVENTH AMENDMENT JURY TRIAL BY THE DISTRICT COURT INSTRUCTING THE JURY THAT THEY WERE BOUND BY DETERMINATIONS (FINDINGS OF FACT) ALREADY MADE (TO-WIT: THOSE MADE BY THE DISTRICT COURT PRIOR TO JURY TRIAL), AND BY BARRING PRESENTATION BY PETITIONER OF TESTIMONY AND DOCUMENTARY EVIDENCE TO THE JURY TO REFUTE THE FINDINGS OF THE DISTRICT COURT.

V. WHETHER THE DISTRICT COURT VIOLATED THE RULE OF LAW ESTABLISHED BY THE SUPREME COURT IN BEACON THEATRES, INC. v. WESTOVER, 359 U. S. 500 (1959), AND THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT IN BROWNLEE v. YELLOW FREIGHT SYSTEM, INC., 921 F.2d 745 (1990), REQUIRING TRIAL OF ALL ISSUES TO THE JURY, LEGAL BEFORE EQUITABLE.

VI. WHETHER PETITIONER WAS DEPRIVED OF AN ADEQUATE/PROPER REVIEW AT THE CIRCUIT COURT OF APPEALS LEVEL BY REASON OF THE EIGHTH CIRCUIT COURT RULING THAT SHE DID NOT SUBMIT NECESSARY TRANSCRIPT (TRANSCRIPTS OF THE ENTIRE DISTRICT COURT PROCEEDINGS), WHEN, IN FACT, THE RECORD UP FOR REVIEW INCLUDED SEVERAL THOUSAND PAGES OF TRANSCRIPTS AND DOCUMENTS WHICH PROVIDED THE COURT WITH MORE THAN AMPLE DOCUMENTATION TO ADEQUATELY ADDRESS THE MATTERS WHICH PETITIONER APPEALED.

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PETITIONER'S REPLY TO RESPONDENTS' BRIEF

Respondents' Statement Of The Case

Requires correction of material errors of fact stated therein (P. 1, ¶ 1):

> WSI (Winnebago South, Inc.) is referred to as "their company", i.e., that of Robert V. Steinhilber (RVS) and Petitioner JFS. (Emph. added.)

Petitioner was never an officer, director, stockholder, employee, agent or possessor af any real or apparent authority connected with the operation of WSI.

> "Their company ..... filed a Statement of Record and Property Report": (Emph. added.)

Petitioner sold her tract to WSI well before ILSA became effective and had no participation with the filings nor any familiarity with them until Respondents/Plaintiffs (Respondents) action was revived in 1992, by which time she had become an attorney (1980).

Page 2, paragraph 3: Motions for Summary Judgment were filed by defendants and for Partial Summary Judgment by Respondents in Feb./Mar., 1995; after oral argument was heard, the District Court ruled from the bench, denying the motions of all defendants, but withheld ruling on Respondents motion for Partial Summary Judgem'ent against Petitioner and WSI, stating only that those "will not be ruled upon today".

The District Court delayed those ruling - against defendants, until November 3, 1995 (156 days), just 3 days before pretrial conference to begin for scheduled jury trial on November 13, 1995. The Court's Order made findings of fact on issues reserved for a jury under Seventh Amendment trial rights, and it was only then that defendants had opportunity to appeal - by Petition for a Writ of Mandamus to the Eighth Circuit Court of Appeals. The District Court refused to certify for immediate appeal. The Petition was denied.

> ".....(J)ury trial resulted in an advisory verdict":

The District Court, which attempted to reserve a right to

designate the jury as only advisory after verdicts, a proposition to which all defendants refused to assent as required by F.R.C.P. Rule 39 (a) (1). Post-trial briefs by the parties resulted in the District Court's Order that: "the dfts. had a 7th Amendment right to a jury trial". (6-3-96 Docket Sheet Entry.)

Respondents' Brief makes five affirmative statements in support of the actions of the District Court, and a sixth contending that the Eighth Circuit Court was correct in denying review. Their Statements I and IV are essentially the same, arguing that the District Court's 1994 ruling to bind Petitioner to alleged stipulations of fact - unsigned by any party or counsel, including Respondents' Counsel filed in 1981, and disavowed as final by all, including Respondents' Counsel and two prior judges - did not by its use in pretrial and trial order, act to deprive Petitioner of Seventh Amendment jury trial.

Statements II and III argue that pretrial of equitable and legal issues based on the disputed stipulations did not deprive Petitioner of a "full, fair and impartial jury trial".

Statement V argues that, since the District Court had already pretried the legal and equitable issues mandated to be tried by jury, it had reduced the eventual "jury trial" to an equitable issue only, thereby "nullifying" Petitioner's rights established by the Supreme Court and the Eighth Circuit Court precedents.

Finally, Statement VI that Petitioner's failure to purchase a full transcript of all proceedings rendered the record inadequate for review by the Eighth Circuit Court and ineligible for review of deprived jury trial rights by the Supreme Court.

Respondents have not confronted any cases or other authority cited by the Petition on legal standards for determining right to Seventh Amendment jury trial as established by Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959) and its progeny including Brownlee v. Yellow Freight Systems, Inc., 921 F.2d 745 (8th Cir. 1990).

Respondents seek to distinguish the conduct of trial of this case in District Court, not by cases or authority holding contrary to Beacon's established principles governing Seventh Amendment jury trial rights, but by postulating a novel theory that Beacon, et al. can be nullified simply by overriding the controlling precedents as if they have no force and effect in establishing a rule of law and as if creation of a record voluminous enough would insulate against review -- by imposing impossible financial burdens upon appellants and intolerable burdens upon appellate courts. (Respondents', p. 11.)

Respondents argue that, although F.R.C.P. 42(b) and Beacon prohibit separate trial of legal and equitable issues in violation of Seventh Amendment jury trial rights, and Granfinanciera v. Norberg, 492 U.S. 33, 42, 106 L.Ed.2d 26 (1989), specifically applies this prohibition to actions seeking cancellation of alleged fraudulent conveyance, characterization of the separately held trials as "mini-trials" makes them less violative of a constitutionally guaranteed right (Pet. Writ, 14, 15, 20).

It was the District Court itself which informed the jury that its pretrial orders of cancellation and Summary Judgment were binding upon them in reaching their verdicts as facts conclusively established by a court in "another trial". And in response to objection by co-defendant Grandview Bank to the prejudicial effect on the jury, of these orders (and the "stipulations" upon which they were based), the District Court argued that they involved only "a trial against the Steinhilbers" in which the Court sought to give the Plaintiffs the relief being sought", i.e., "the Plaintiffs' desire to clear the second deed of trust from the property". (Pet. Appellate Brief Ex. Book I, Ex. pp. 87 & 97, trans. 11-20-93.)

It is clear that the District Court viewed the pretrial Order as a separate trial to collaterally estop any profer by defendants of any evidence controverting either the alleged stipulations of fact, the conclusions reached by the Court, or reference to the Court's part in the "other trials", including the Partial Summary Judgment Order. (Pet. Appell. Brief Ex. Book I, Ex. 97, 11-20-95 trans.)

This is precisely the result prohibited by Beacon and progeny as an unconstitutional deprivation of a Seventh Amendment jury trial right.

Respondents do not argue that the holdings of the Beacon and Brownlee line of cases do not apply to issues of the Complaint as brought by them and as defined by the District Judge in its Second Amended Certification as a class-action filed on June 6, 1980. Instead, they seem to argue that, where, as here, a District Court chooses to disregard controlling law and Federal Rules of Procedure by holding separate bench trials of issues, mandated for jury trial, and where, as here, interlocutory review of those errors is evaded, and the Court thereafter (however erroneously) declares that "only equitable issues remained", a party's right to rely on Beacon has been successfully nullified. (Respondents, at p. 11.)

If Respondents are correct, this new right might be called "jury right nullification", a clever procedural strategy that trumps both the provisions of the Constitution and the legal principle of stare decisis.

If Respondents are correct, the strategy can also succeed in lessening the burden on appellate courts. A succession of separate trials, rather than one mandated jury trial, creates an unwieldly record for review and, if absence of full transcript is deemed controlling and fatal, even where there is record evidence a Seventh Amendment jury trial right has been denied, review can also be denied, and, perhaps, the jury right nullification strategy ratified for future management of complex litigation.

Respondents' Statement VI, (1) asserts that Petitioner's failure to provide an adequate record on appeal, (2) including a "full transcript of matters sought to be reviewed", and (3) made it "virtually impossible for the Plaintiffs to respond" and defacto "impossible for the appellate court to review". (Respondents at pp. 14-17.)

(1) "Inadequate record on appeal": The entire District Court record was transmitted to the appellate court. (See partial list of contents, Peti., p. 10.) Respondents

had the same records as Petitioner and, prior to transmission, more convenient access to those in the Court record, including access to transcripts ordered by the parties and the Court.

(2) "(F)ull transcript of matters sought to be reviewed": More than 100 pages of transcript relating to "matters sought to be reviewed", i. e., deprivation of Seventh Amendment jury trial, were included as Exhibits to Petitioner's Brief on appeal, all relating directly to the District Court's estoppel of rights of defendants' to present testimony and evidence on the issues raised in Respondents' Complaint and use by the Court and Respondents of pretrial orders to mislead and prejudice the jury. (Petitioner's Appellate Brief Exhibit Books I and II.)

Not included in Petitioner's Exhibits were an additional 2,046 pages ordered and designated by her involving 22 different hearing dates, 47 sets of Court-deputy minute sheets for as many Court sessions. Respondents' motion to require full transcripts was granted, and use of the designated pages was denied.

(3a) Lack of full transcrips made it "virtually impossible for Plaintiffs to respond": As aforesaid, Respondemts had the same records as Petitioner, and were free to order any and all transcripts - and be reimbursed if they prevailed. Respondents had three firm-attorneys in the courtroom at all times, with additional as they deemed necessary, plus support staff and at least three experts. Petitioner had and has no staff, her own notes and a portable word processor - if whining is material to this appeal. (See footnote 1, Respondents at p. 17.)

(3b) Lack of full record and transcript made it "defacto" impossible for the appellate court to conduct any meaningful review" ("of matters sought to be reviewed").

Again, the full District Court record was submitted; specific pleadings, orders, transcripts and documents were attached to Petitioner's Brief as Exhibits for the convenience of the appellate court - all relating to the matters sought to be reviewed, i.e., deprivation of a full and fair

Seventh Amendment jury trial on all the issues raised by Respondents.

Further, evidence that the District Court wrongfully abrogated Petitioner's right to jury trial does not depend on a transcript of rulings on admissibility or sufficiency of evidence, as Respondents imply by cases they cite, which cases were dismissed on appeal because transcripts were required.

The very actions of the District Court in preempting and trying issues required to be tried by jury is the de-facto evidence that the rule of law was violated. The District Court made findings of fact from disputed statements of fact and drew inferences in making conclusions from them, that only the jury was entitled to make under the controlling precedents of the Supreme Court and the Eighth Circuit Court of Appeals.

The Respondents assert that the ruling stipulations was correct. The ruling binding Petitioner to disputed stipulations, upon which the entire trial proceedings were based, is not a matter to be resolved by transcript as asserted. (Resp., p. 7.). The appellate court received the District Court record of Final Pretrial Order of November 11, 1980, and Petitioner included a full copy in Exhibit Book I, # 130-143. The provisions of the Order make patently clear the error of the Court's ruling and the indisputable evidence that Petitioner never failed (as alleged by Respondents) to deny erroneous statements and did not fail to comply with the Orders requirements in Part I, paragraphs D and E; that she submitted the narrative statememt which either admitted or denied each separate sentence submitted in Respondents' pretrial brief, as irrefutably shown by the Docket Entry on 2-10-81, and by Exhibits 117-129 of Petitioner's Appellate Brief. Additional evidence submitted to the appellate court includes Petitioner's initial Answer, her Summary Judgment pleading and Affidavit, and other Court record items.

Respondents have never denied that they failed to submit the required Reply Brief to defendants and were therefore not in compliance with paragraphs F and G of

Part I of the Order. They were, therefore, the only party against whom the sanctions provided in Part I, paragraph H, could have been applied. No transcript is required to verify that Respondents failed to abide by the Order. (Pet. at p. 21-23.) Thirteen pages relating to these facts, supported by Exhibit documents, were submitted to the Appellate Court, plus to the entire District Court record.

The District Court record on review, without transcript, was sufficient to prove procedural errors in violation of Seventh Amendment Jury Trial Right. Transcript is not needed to review the substantive errors of pretrial rulings and orders made by the District Court on issues rightfully tried by a Seventh Amendment Jury.

Stipulations Ruling. The terms of the 11-25-80 Pretrial Order provide the objective evidence that the only party subject to the paragraph "H" sanctions was the Respondents. Instead, its application to Petitioner deprived her of the right to contest controverted facts to a jury. The unagreed allegations of fact by Respondents then controlled the entire course of trial. This Order and the resulting compliance, or lack of it, by the parties, are matters of the record on appeal, and were separately provided to the Eighth Circuit Court as Petitioner's exhibits.

The Cancellation Order: Objective evidence in the form of contemporaneous value opinions by the original Receiver and others, including motions, affidavits and Conference transcript, are included in the record on appeal, together with the report by Grandview's Bank's expert witness, whose findings and conclusions on value rebutted those of the Cancellation Order. The jury believed him, as demonstrated by their verdicts for Grandview Bank.

The absence of transcript does not preclude the Appellate Court from determining that not only was the issue of the validity of the note and deed of trust wrongly usurped from the jury, its conclusions are objectively demonstrated to be erroneous upon de novo review.

The Order of Partial Summary Judgment: The legal issue of Petitioner's status under the ILSA definitions,

wrongly usurped the Partial Summary Judgment Order, is also demonstrably erroneous by the objective terms of those instruments evidencing Petitioner's lien rights - a part of the record on review and separately provided as to the Appellate Court as exhibits to her Brief. The rule of law governing the trial of legal issues raised by the statutory Complaint and the F.R.C.P. both demonstrate the error of usurping this issue from the jury. And the explicit terms of the debt agreements, as well as the limitations of the Plaintiffs' class to specific dates of purchase, all belie the conclusions of the District Court and are sufficient for de novo review based on objective fact, without resort to transcripts of testimony or oral argu- on admissibility or sufficiency of evidence.

There Never Was An Advisory Jury: Respondents assert that the "jury could only be advisory" as to Respondents' claims. (Respondents' V, pp. 13-14.)

The eleventh hour conversion of the scheduled jury trial to "advisory" status was a suggestion of the District Court in the week before trial was to commence. No defendant would assent. It was among the reasons Petitioner sought the Writ of Mandamus from the Eighth Circuit to enforce her Seventh Amendment rights. It was denied, but caused the District Court to believe "a" jury trial was required. That Court then ruled that there would be "a jury trial", but that the Court reserved the right to rule it "advisory" after the verdicts. Post trial briefs persuaded the Court that "the dfts had a 7th Amendment right to a jury trial". (Briefs and Petition for Writ were attached as exhibits to Petition for Rehearing by Panel.)

Respondents still maintain that the District Court and the Eighth Circuit Court correctly held that Petitioner did not have a right to any jury trial with respect to "those claims and remedies". The nature of Respondents' claims and remedies is addressed in Petition (pp. 16-19), and in the aforesaid briefs.

The District Court's Order made no such exception to its conclusion that defendants were entitled to a "7th Amendment" jury trial, and the very definition of a Sev-

enth Amendment jury trial right in the holdings of the Supreme Court and the Eighth Circuit Court on this issue is trial of all issues based on a common set of facts to a jury, with legal issues to be tried first. The Eighth Circuit Court made no such finding, stating only that Petitioner was not denied her right to a jury in the District Court "as the remedies sought and granted against (her) were equitable in nature".

There never was an option to try the issues of Respondents' Complaint by other than a Seventh Amendment jury. (Petition, pp. 10-21.) Respondents tried their claim of conspiracy to defraud lot purchasers, a legal issue, under the jurisdiction of the ILSA. The ILSA provided that they could sue at law or in equity, i.e., for recission or for damages on the contract. They chose to do both.

Respondents continue (citing cases at p. 13-14) to contend that after separate bench trials of equity and legal issues, they sought only equitable remedies, citing authority for purchaser's options to sue on the contract or for recission and restitution when claiming fraudulent inducement. Those, in fact, are the very options provided in the ILSA, but, with either choice, the measure of damages is the same, namely: "In no case shall the amount recoverable under this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, and reasonable court costs." (15 U.S.C. §1709(e)) (Petition, App. 6m, n.)

The ILSA provided a complete legal remedy under either option, and, "..... (I)n the federal courts, equity has always acted only when legal remedies were inadequate". (Beacon, at 509.)

Respondents tried an issue required to be tried in a court of law - for which the ILSA provided a complete legal remedy - with no distinction in the amount recoverable where demanding recission of the contract or damages and enforcement, a distinction without a difference in the ultimate remedy -- and without a difference in the requirement that the nature of the complaint required trial to a Seventh Amendment jury.

This litigation has been a factor of influence in Petitioner's life for 28 years. It has been a controlling factor for more than 8 years. And still there has been no review of procedural and substantive errors complained of.

During the course of judicial proceedings, Petitioner has been deprived of property rights and the right to unsullied reputation. A filing in an official reporter for the federal courts (judicially protected) contained statements defaming her character and falsely labeling the lawsuit as a receivership action when in fact, the matter covered in the reported decision was an equitable issue in aid of a statutory cause of action which the rule of law required to be tested for truth or falsity by a jury.

Petitioner lawfully acquired real property, lawfully sold it and lawfully retained secured lien rights. All lawful rights accruing from her property interests were held in suspension for 23 years from the filing of this lawsuit and then cancelled by the District Court's summary Order, recorded as McFarland v. Winnebago South, Inc., 863 F. Supp. 1025 (W.D.Mo. 1994).

Petitioner has no private legal recourse against the judicial system for deprivation of property or reputation. Her sole recourse is that of review by appellate courts of procedural and substantive errors made in abrogation of her right to a Seventh Amendment jury trial.

WHEREFORE, Petitioner prays this Court to grant her Petition for a Writ of Certiorari to the Eighth Circuit Court of Appeals to require it to fulfill its responsibility of overseeing actions of the district courts, and, at long last, do the right thing under the rule of law. This is Petitioner's court of last resort for confirmation that a rule of law does exist protecting Constitional Rights of all citizens in their pursuit of equal justice under the law.

Respectfully submitted,

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